17F

Attorney's Docket No. RTEE 2 13410-1 PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:	Chartier, et al.		
Serial No:	10/764,302	Group No:	3723
Filed:	January 26, 2004	Examiner:	Debra S. Meislin
For:	PIVOTING JAW PIPE WRENCH		

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

TRANSMITTAL OF APPEAL BRIEF

1. Transmitted herewith, in triplicate, is an APPEAL BRIEF in this application.

2. STATUS OF APPLICANT
This application is on behalf of other than a small entity.

3. FEE FOR FILING APPEAL BRIEF
The $500.00 fee for filing this APPEAL BRIEF is enclosed.

4. If any additional fee is required, charge Account No. 06-0308.

Respectfully submitted,
FAY, SHARPE, FAGAN, MINNICH & McKEE

E. Kent Daniels, Jr. (Reg. No. 19,598)
1100 Superior Avenue, Seventh Floor
Cleveland, Ohio 44114
(216) 861-5582

CERTIFICATE OF MAILING/TRANSMISSION (37 CFR 1.8a)

I hereby certify that this correspondence is, on the date shown below, being:

✓ **MAILING**
deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to the Commissioner of Patents and Trademarks, Washington, D.C. 20231

— **FACSIMILE**
transmitted by facsimile to the Patent and Trademark Office

Date: 04-19-05

Nancy M. Grams
Signature

Nancy M. Grams
Type or print name of person certifying

CERTIFICATE OF FIRST CLASS MAILING

I hereby certify that this paper and/or fee is being deposited with the United States Postal Service as First Class Mail service on **April 19, 2005** and is addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

By: Nancy M. Grams

RTEE 2 13410-1

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE HONORABLE BOARD OF PATENT APPEALS AND INTERFERENCES

In re the Application of: CHARTIER, et al.

Application No.: 10/764,302 Examiner: Debra S. Meislin

Filed: January 26, 2004 Docket No.: RTEE 2 13410-1

For: PIVOTING JAW PIPE WRENCH

BRIEF ON APPEAL

Appeal from Group 3723

FAY, SHARPE, FAGAN, MINNICH & MCKEE, LLP
1100 Superior Avenue – Seventh Floor
Cleveland, Ohio 44114-2579
Telephone: (216) 861-5582
Attorneys for Appellants

Page

This is an appeal from the decision of the Examiner dated December 3, 2004 finally rejecting claims 1, 4 and 7 in the above-identified patent application. No claims are allowed.

I. REAL PARTY IN INTEREST

Emerson Electric Co. of St. Louis, Missouri is the real party in interest as assignee of the named inventors.

II. RELATED APPEALS AND INTERFERENCES

There are no related appeals and interferences.

III. STATUS OF THE CLAIMS

This application contains Claims 1-25.

Claims 2, 3, 5, 6, and 8-25 have been cancelled, whereby the claims on appeal are claims 1, 4 and 7. A copy of these claims appears in the Appendix of Claims attached hereto.

IV. STATUS OF AMENDMENTS

The above application is a continuation of application Serial No. 10/144,122 filed May 10, 2002 and issued June 1, 2004 as Patent No. 6,742,419. By an amendment being filed concurrently herewith, appellants propose to amend the specification to identify the issued patent.

V. SUMMARY OF THE INVENTION

Referring Figures 1 and 2 of the drawing, page 4 of the specification, lines 6-26, and page 5 of the specification, lines 4 and 5, appellants' wrench is for gripping any one of a plurality of cylindrical workpieces in a progressive sequence of different diameters and comprises a handle 12 having opposite ends14 and 16 and a fixed jaw 18 on end 16 of the handle. The wrench further includes a pivotal jaw member 22 having first and second jaw faces at an angle to one another and provided with a plurality of teeth 28 and 30, respectively, facing inwardly of end 16. The pivotal jaw member is mounted on end 16 by a pin 38 for displacement of the first and second jaw surfaces about a jaw axis 40 toward and away from fixed jaw 18. With reference to Figures 1, 2 and 4 of the drawing and page 5 of the specification, lines 7-12, fixed jaw 18 comprises a plurality of teeth laterally therealong and facing longitudinally outwardly of end 16 and which teeth include a plurality of discrete teeth T1-T7. Each discrete tooth is for providing just single tooth contact with a different one of each of the plurality of cylindrical workpieces in a progressive sequence of different diameters and, with reference to Figures 6A-6G of the drawing and page 7 of the specification, line 23 to page 8, line 6, and page 5 of the specification, lines 4, 5 and 7-12, each workpiece of given diameter in the progressive sequence P1-P7 of different diameters to be gripped by the wrench is cradled between the first and second jaw faces and is engaged by just the one of the plurality of discrete teeth T1-T7 which is provided on the fixed jaw for the workpiece of given diameter.

With reference to Figure 4 of the drawing and page 5 of the specification, lines 13-17, additional teeth 50 are preferably provided between adjacent ones of

the discrete teeth T1-T5 to promote the gripping capability of the wrench with regard to pipe fittings, rods and other objects and workpieces in addition to the series of pipes. Also, as shown in Figures 6A-6G and described in the specification from page 7, line 23 to page 8, line 6, each of the discrete teeth T1-T7 has an apex A and the pivotal jaw member has a vertex 32 whereby, when a workpiece of given diameter is gripped by the wrench, a line L1 through the jaw axis 40 and apex A of the corresponding discrete tooth and a line L2 through the vertex 32 and apex A of the discrete tooth intersect to provide a camming angle therebetween of from 90° to 150°.

VI. PRIOR ART RELIED UPON – U.S. PATENT 460,230 (Gunnarson) Issued September 29, 1891 – Entitled "Three Gripped Self-Adjusting Pipe Wrench"

The patent to Gunnarson discloses a pipe wrench which, as shown in Figures 1 and 3, comprises a pivotal jaw A provided with two series of teeth m and n at an angle mln to each other, and a fixed jaw B which has a toothed curve o. Jaw B is on the end of a lever d, and jaw A is pivotally attached to the lever at point c. Teeth m and n decrease in size toward corner l in proportion with the pipes they work upon, and the teeth on curve o decrease in size toward the outer end of the jaw in proportion with the pipes they act upon.

VII. THE ISSUE

Whether claims 1, 4 and 7 are anticipated by the patent to Gunnarson under 35 U.S.C. § 102(b).

VIII. GROUPING OF CLAIMS

Appellants consider claims 4 and 7 to be separately patentable from claim 1 from which they depend.

IX. ARGUMENT

Appellants' claim 1 requires that the fixed jaw include a plurality of discrete teeth and that each discrete tooth is for providing just single tooth contact with a different one of each of a plurality of cylindrical workpieces in a progressive sequence of different diameters. Claim 1 further sets forth that each workpiece of given diameter in the progressive sequence which is to be gripped by the wrench is cradled between the first and second jaw faces and is engaged by just the one of the plurality of discrete teeth provided on the fixed jaw for that workpiece.

It is the examiner's contention that Figure 1 of Gunnarson discloses appellants' claimed discrete tooth to workpiece relationship and, in support thereof, the examiner relies on an enlargement of Figure 1 of Gunnarson, submitted as "ATTACHMENT A" which is of record. In particular in this respect, the examiner marks the teeth in Gunnarson at locations 1, 2 and 3 with blue ink to show the alleged single tooth contact.

It is appellants' contention, as shown in the enlargement of Figure 1 which is of record as "EXHIBIT 1" submitted by appellants, that, at location 2 in Figure 1 of Gunnarson the tooth above the tooth indicated by the examiner to contact the workpiece also engages the workpiece, and that the same relationship exists at location 3 in Figure 1 of Gunnarson. Moreover, Figure 3 of Gunnarson, which is included in appellants' "Exhibit 1," shows two teeth on jaw B engaging the

corresponding workpiece at locations 1 and 2, and a single tooth engaging the workpiece at location 3.

Figures 1 and 3 of Gunnarson's drawing are conflicting with respect to what they illustrate and what they are described in the specification as showing. In this respect, as set forth in Gunnarson on page 1, lines 24-33, Figure 1 is a side view of the wrench showing the principle of construction and its working, and "Fig. 3 is a side view of pliers or tongs constructed on exactly the same principle as Fig. 1 and referring to the same description." (Emphasis added.) Gunnarson further states that similar letters refer to similar parts throughout the several views. In addition to the foregoing discrepancies in the drawing of Gunnarson, there is absolutely no reference in the specification of Gunnarson to a plurality of discrete teeth, each for engaging a workpiece of different diameter. To the contrary, Gunnarson's design is based on the teeth m and n which are decreased in size towards the corner l, and the only reference to the configuration of jaw B is that it will have a curvature which provides for the same angle of leverage c-i-l from a line drawn through the pivot c to the center of each pipe. This is clearly set forth in Gunnarson at page 1, lines 49-65. Therefore, it is a desired leverage upon which Gunnarson's design is based, and that leverage is obtained independent of whether one or two adjacent teeth on jaw B engage the workpiece.

For the foregoing reasons, it is respectfully submitted that Gunnarson is not an appropriate reference for a rejection of appellants' claims under 35 U.S.C. § 102(b). It is well accepted that a prior art reference must be considered in its entirety, and there has been no acknowledgement by the examiner that Figure 3 of Gunnarson was considered with respect to appellants' contention that Figure 3

refutes the examiner's contention with respect to Figure 1. As stated by the Federal Circuit in *In re Paulsen*, 30 F.3d 1475, 1479, 31 USPQ 2d 1671, 1673 (1994) citing *In re Spada*, 911 F.2d 705, 708 15 USPQ 2d 1655, 1657 (Fed. Cir. 1990) "A rejection for anticipation under Section 102 requires that each and every limitation of the claimed invention be disclosed in a single prior art reference." The Federal Circuit further stated, citing In re Spada, "In addition, the reference must be enabling and describe the applicants claimed invention sufficiently to have placed it in possession of a person of ordinary skill in the field of the invention." Further in support of appellants' contention regarding the disclosure in Gunnarson, arguments based on mere measurements of patent drawings are of little value in the absence of written description in the specification of quantitative values. See *In re Wright*, 569 F.2d 1124, 1127, 193 USPQ 332, 335 (CCPA 1977) citing *In re Chitayat*, 408 F.2d 475, 478, 161 USPQ 224, 226 (CCPA 1969).

In view of the conflicting disclosures of Figures 1 and 3 of the Gunnarson patent with respect to engagement of a single discrete tooth with a workpiece of given diameter, and the absence of any description whatsoever in the specification of the Gunnarson patent regarding such single tooth contact with a workpiece, it is respectfully submitted that one skilled in the art of wrenches would not have appellants' claimed invention placed in his or her possession from the disclosure of Gunnarson. Accordingly, it is respectfully submitted that appellants' claim 1 is patentable under 35 U.S.C § 102(b) over Gunnarson together with claims 4 and 7 which are dependent from claim 1. Therefore, the examiner's decision finally rejecting these claims should be reversed.

Claim 4 is dependent from claim 1 and adds thereto the provision of teeth laterally between adjacent ones of the discrete teeth. As set forth in appellants specification, these teeth promote gripping pipe fittings, rod and other objects in addition to the series of pipes. In view of the discrepancies between Figures 1 and 3 of Gunnarson, there is no disclosure of adjacent discrete teeth with another tooth therebetween. Accordingly, claim 4 further patentably distinguishes from Gunnarson.

Claim 7 is dependent from claim 1 and adds thereto a relationship between each discrete tooth, the vertex between the first and second jaw faces and the jaw pivot axis by which a camming angle is established for optimizing the gripping of each different size workpiece. As set forth hereinabove, Gunnarson does not disclose a single discrete tooth for each of a plurality of different diameter workpieces and, therefore, cannot disclose the camming angle feature set forth in claim 7. Accordingly, claim 7 further patentably distinguishes from Gunnarson.

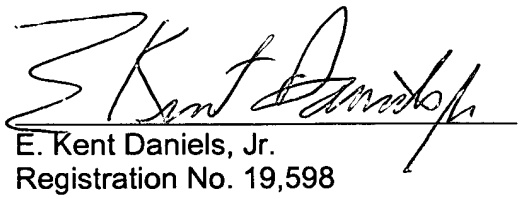
X. SUMMARY AND CONCLUSION

The claims on appeal are directed to a wrench which is adapted to grip any one of a plurality of cylindrical workpieces having different diameters through a fixed and pivotal jaw arrangement by which a workpiece of given diameter is cradled between first and second jaw faces of the pivotal jaw and just one discrete tooth provided on the fixed jaw for engagement with the workpiece of given diameter. The patent to Gunnarson illustrates a wrench in Figure 1 and pliers in Figure 3 and states that the latter is constructed on exactly the same principle as the wrench. Figures 1 and 3, however, are in conflict with one another in that, while alleged to be the

same, they illustrate tooth-workpiece relationships different from one another, and different from the discrete tooth-workpiece relationship defined in appellants' claims on appeal. Moreover, there is no description in the specification of Gunnarson regarding a discrete tooth-workpiece interengagement for each of a plurality of different diameter workpieces as is required in appellants' claims. Accordingly, Gunnarson's disclosure does not place appellants' claimed invention in the possession of a person of ordinary skill in the field of the invention and, therefore, is not an appropriate prior art reference for rejecting appellants' claims under 35 U.S.C. § 102(b).

It is respectfully submitted, therefore, that the claims on appeal patentably distinguish under 35 U.S.C. § 102(b) from the patent to Gunnarson relied upon by the examiner in the final rejection, whereby reversal of the examiner's decision finally rejecting claims 1, 4 and 7, and a finding of patentability with respect to these claims is in order and is respectfully requested.

Respectfully submitted,



E. Kent Daniels, Jr.
Registration No. 19,598

FAY, SHARPE, FAGAN, MINNICH & MCKEE, LLP
1100 Superior Avenue – Seventh Floor
Cleveland, Ohio 44114-2579
Telephone: (216) 861-5582

Filed: April 19, 2005

CLAIMS APPENDIX

CLAIMS INVOLVED IN THE APPEAL:

1. A wrench for gripping any one of a plurality of cylindrical workpieces in a progressive sequence of different diameters comprising, a handle having longitudinally opposite ends, a fixed jaw on one of said ends, said fixed jaw comprising a plurality of teeth laterally therealong and facing longitudinally outwardly of said one end, said teeth including a plurality of discrete teeth, each discrete tooth being for providing just single tooth contact with a different one of each of the plurality of cylindrical workpieces in a progressive sequence of different diameters, a pivotal jaw member having first and second jaw faces at an angle to one another and each including a plurality of teeth facing inwardly of said one end, said pivotal jaw member being mounted on said one end for displacement of said first and second jaw surfaces about a jaw axis toward and away from said fixed jaw, each workpiece of given diameter in said progressive sequence to be gripped by the wrench being cradled between said first and second jaw faces and engaged by just the one of said plurality of discrete teeth provided on said fixed jaw for the workpiece of given diameter.

4. A wrench according to claim 1, wherein said plurality of teeth laterally along said fixed jaw includes teeth laterally between adjacent ones of said discrete teeth.

7. A wrench according to claim 1, wherein each of said discrete teeth has an apex and said pivotal jaw member has a vertex between said first and second jaw faces and wherein, with the workpiece of given diameter gripped by the wrench, a line through said jaw axis and the apex of the one discrete tooth for the workpiece of given diameter and a line through said vertex and said apex of the one discrete tooth intersect to provide a camming angle therebetween of from 90° to 150°.